IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	
	:	Confirmation No.: 9419
Hideki TOMINAGA et al.	:	
	:	
U.S. Application No.: 10/815,922	:	Group Art Unit: 2859
	:	
Filed: April 2, 2004	:	Examiner: G. Verbitsky

For: Two-Color Radiation Thermometer

PRE-APPEAL BRIEF REQUEST FOR REVIEW

December 5, 2005

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the final Office Action dated September 9, 2005, please conduct a pre-appeal brief review of the above-identified application.

Arguments

The application should be allowed because each of the rejections presented in the final Office Action contains clear error. Specifically, each rejection contains a clear legal deficiency.

In the Response to Arguments section of the Office Action (page 5, paragraph 7), the examiner asserts that "Applicant states that Lee and Fontenot each employ two distinct detectors, while the present invention employs a single CCD sensor. This argument is not persuasive because this limitation is not stated in the claims." The examiner concludes that "[b]y claiming 'one image pickup device,' applicant does not limit the invention to a single pickup device."

The examiner is correct to the extent that claim 1 does not explicitly recite "a single" image pickup device. Instead, claim 1 (reproduced in clean form below) defines "one image pickup device":

> 1. A two-color radiation thermometer for measuring a temperature of an object, comprising:
>
> one image pickup device having a light receiving surface with a plurality of micro photo receiving elements arranged two-dimensionally, said light receiving surface having a first area and a second area,
>
> light diverging means for selecting a first spectrum and a second spectrum, and guiding light radiated from the object in the first spectrum toward the first area, and guiding light radiated from the object in the second spectrum toward the second area,
>
> a wave limitation device formed at a front side of the image pickup device for selecting first and second wavelengths of the light irradiated on the first area and the second area, and
>
> temperature calculation means electrically connected to the image pickup device, said temperature calculation means receiving a first image signal corresponding to the first wavelength from the micro photo receiving elements located in the first area and a second image signal corresponding to the second wavelength from the micro photo receiving elements located in the second area, and calculating the temperature of the object based on the first and second image signals.

But the examiner is in error in asserting that "[b]y claiming 'one image pickup device,' applicant does not limit the invention to a single pickup device." This is not an issue of claim interpretation, but rather an issue of a clear legal deficiency in each rejection.

Claim interpretation doctrine recognizes that a word should be given its "ordinary" meaning unless a different meaning is clearly indicated in the specification. In fact, the USPTO's court of review, the U.S. Court of Appeals for the Federal Circuit, has repeatedly held that there is a "strong" or "heavy" presumption in favor of ordinary meaning. *See, e.g., Texas Digital Systems, Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202, 64 USPQ2d 1812 (Fed. Cir. 2002).

Applicants' claim 1 defines "one image pickup device." The word "one" means one, not "one or more."

In fact, the Federal Circuit even repeatedly employs the word "one" in its holdings regarding nonspecific claim terminology including indefinite articles such as "a" and "an." See, e.g., the holding in *KCJ Corporation v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 55 USPQ2d 1835 (Fed. Cir. 2000), in which the Federal Circuit stated that "[t]his court has repeatedly emphasized that an indefinite article "a" or "an" in patent parlance carries the meaning of "one or more" in open-ended claims containing the transitional phrase "comprising."

It is important to note that the Federal Circuit did not say that the indefinite article carries the meaning of "a single one or more," or "only one or more," but rather, simply "*one* or more."

Secondly, the court may also undertake an examination of the written description portion of the specification to ascertain whether to limit the meaning of a claim term. That is, when the claim language or context calls for further inquiry, the court

consults the written description for a clear intent to limit the invention to a particular embodiment. In the present case, not only does the claim language not call for further inquiry, but there is no usage in the written description that would attribute any meaning to the word "one" other than its ordinary meaning.

Thirdly, the court may also undertake an examination of an application's prosecution history to ascertain whether to limit the meaning of a claim term. In the present case, however, there is nothing in the application's prosecution history to indicate that Applicants intended any other meaning for the word "one" than its ordinary meaning. In fact, the pertinent portion of claim 1 remains in its original as-filed form, i.e., employing the terminology "one image pickup device."

Thus, since claim 1 defines "one image pickup device," it is not anticipated by either Lee or Fontenot, each of which discloses two detectors.

Claims pending in the application are patentable over the cited references. The arguments for Lee, Fontenot and Chen as stated from page 6, line 11 to page 8, line 12 in the amendment dated June 21, 2005 are incorporated herein.

The final rejections, therefore, in view of the clear legal deficiency, are in error.

In view of the above, Applicants respectfully submit that this application is in immediate condition for allowance.

Respectfully submitted,

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